Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

D.C. No. 98-1048-Civ-J-21C
Circuit No. 00-12267-AA

KATHLEEN CRUME, Personal Representative of the Estate and
Surviving Parent of James Patrick Hurley

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

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25 pp

QUESTION PRESENTED FOR REVIEW

I. WHETHER THE FERES DOCTRINE SHOULD BE OVER-RULED BECAUSE IT DOES NOT REFLECT THE LEGISLATIVE INTENT BEHIND THE FEDERAL TORT CLAIMS ACT AND MANY CIRCUITS ARE RELUCTANT TO APPLY THE WIDELY CRITICIZED DOCTRINE

LIST OF PARTIES

Kathleen Crume, Personal Representative of the Estate and Surviving Parent of James Patrick Hurley

United States of America

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Kathleen Crume, respectfully prays that a Writ of Certiorari issue to review the judgment and order of the Eleventh Circuit Court of Appeals, in the above entitled proceeding.

OPINIONS BELOW

Crume v. United States of America, Unpublished Opinion, Middle District of Florida, Filed March 30, 2000, reprinted in the appendix. App. 1

Crume v. United States of America, Unpublished Opinion, Eleventh Circuit Court of Appeals, Filed November 17, 2000, reprinted in the appendix. App. 8

JURISDICTIONAL STATEMENT

The judgment of the Eleventh Circuit Court of Appeals was entered on November 17, 2000. The jurisdiction of this Court is conferred by 28 U.S.C. Section 1254(1), which allows a review by writ of certiorari for a final judgment entered by a Federal Court of Appeals.

STATUTORY PROVISIONS INVOLVED

Federal Tort Claims Act, 28 U.S.C. Section 1346 (b)(1), reprinted in the appendix at App. 12

STATEMENT OF THE CASE

On approximately October 20, 1998, Petitioner Kathleen Crume (hereinafter referred to as "Kathleen Crume" Or "Mrs. Crume"), filed her complaint as personal representative of the estate of her son James Hurley (hereinafter referred to as "Hurley"). In her complaint, she alleged that her son, as Ensign in the U.S. Navy, committed suicide as a result of the Navy's medical malpractice. Pursuant to the federal jurisdiction conferred by the Federal Tort Claims Act, 28 U.S.C. §1346(b)(1), Mrs. Crume filed her complaint with the Middle District Court of Florida.

Ensign James Patrick Hurley committed suicide in June of 1995. Petitioner Kathleen Crume filed a claim in the trial court as surviving parent and personal representative of the estate of her son, James Hurley. Shortly after Hurley graduated from the University of Notre Dame in August 1994, he joined the U.S. Navy. He was a young man who had a documented history of very serious psychiatric problems, which included suicide attempts, suicide ideation and plans, severe depression, bipolar disorder, and sustained alcohol abuse. The Naval Clinic in Athens, Georgia, which is a branch of the Naval Hospital in Jacksonville, Florida, as well as the hospital itself, documented these findings and determined that Hurley was *handicapped and unable to perform the duties*. When Hurley was released, with a 21-day convalescent leave, he was instructed to return for *disability processing*.

Only five days after his return, Hurley was again at the clinic, where the doctors found him to be suffering from depression and personality disorder. His medication was increased. The next day, he requested a four day leave. The request was granted.

On leave, Hurley went to Notre Dame in Indiana and there, committed suicide. The twenty-three year old man, declared handicapped and unable to perform his duties, was in the midst of disability processing and on approved leave when he suffered the injuries complained of in the lawsuit brought by his surviving mother. Petitioner alleged it was the Respondent's professional negligence that was the direct and proximate cause of her son's untimely death.

In January 1999, the named defendant in the case, the U.S. Navy filed a Motion to Dismiss, primarily arguing that the Feres Doctrine barred the suit. In February 1999, the court granted Kathleen Crume's request to amend the complaint. In March 1999, Petitioner then amended the complaint by naming the "United States of America" as the defendant, rather than the "U.S. Navy". The claims and substance of the complaint remained the same.

In March 1999, Respondent filed a Motion to Dismiss the amended complaint, again relying on the Feres Doctrine. Petitioner filed her objection to the Motion to Dismiss and discovery proceeded.

In February 2000, the Court granted Petitioner's request to amend the complaint in order to add "surviving parent" as a capacity of the Petitioner. Petitioner filed a second amended complaint on February 22, 2000. In March 2000, Respondent filed another Motion to Dismiss the amended complaint, leaving the Motion to Dismiss the second amended complaint pending. On March 30, 2000, visiting Judge Wayne Alley granted the Motion to Dismiss, finding lack of subject matter jurisdiction.

On April 27, 2000 Petitioner timely filed her notice of appeal with the Eleventh Circuit Court of Appeals. The Circuit Court issued a judgment, affirming the dismissal of Petitioner's claim on November 17, 2000.

REASONS FOR GRANTING THE WRIT

THE FERES DOCTRINE SHOULD BE OVER-RULED BECAUSE IT DOES NOT REFLECT THE LEGISLATIVE INTENT BEHIND THE FEDERAL TORT CLAIMS ACT AND MANY CIRCUITS ARE RELUCTANT TO APPLY THE WIDELY CRITICIZED DOCTRINE.

With the passing of the Federal Tort Claims Act, Congress authorized a limited waiver of sovereign immunity from recognized causes of action. The United States Supreme Court, determining that certain types of claims by military persons should not be included in the statute, carved out an exception, which has become known as the Feres Doctrine. The Feres Doctrine specifically barred claims for injuries which 'arise out of or are in the course of activity incident to service.' Feres v. United States, 340 U.S. 135, 146 (1950).

The Federal Tort Claims Act (FTCA) specifically states:

...the district courts,..., shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. §1346 (b)(1)

The Act set forth specified exceptions to the U.S. Government's broad waiver of immunity. Specifically, the act excludes "any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war." 28 U.S.C. § 2680(j). Within the act, Congress also defined an "employee of the Government" as to include 'members of the military or naval forces of the United States'. 28 U.S.C. § 2671. These references in the Act itself indicate that Congress contemplated that injuries to servicemen and servicewomen would be included within the scope of the Act. Despite the clear language of the Act, the Feres Court determined that Congress must have intended for an exception to apply to servicemen who were acting incident to service at the time of their injuries. See Feres at 156-57.

After Feres, the Circuits were left to formulate analysis which would determine whether a claimant was truly acting 'incident to service' and to determine the actual scope of Feres. Specifically, the Circuit courts had to determine what injuries and acts were covered by the language of "arising out of or in course of activity incident to service".

After Feres, case law among the Circuits attempted to limit the Feres scope to claims which supported the underlying policy behind Feres. See e.g. Atkinson v. United States, 825 F.2d 202 (9th Cir. 1987). Circuits have also been critical of *Feres*, even when applying the doctrine. See e.g. Day v. Massachusetts Air Nat'l Guard, 167 F.3d 678, 683 (1st Cir. 1999). ("Possibly *Feres* itself deserves reexamination by the Supreme Court"). That underlying policy was articulated in the subsequent Supreme Court decision in United States v. Shearer, 473 U.S. 52, 57 (1985). The Court stated that the primary policy behind barring certain claims, was to refrain from having an adverse effect on military discipline and effectiveness. The Court also noted its reluctance to second-guess military decisions. Id.

The Eleventh Circuit Court of Appeals, along with many of its sister courts, attempted to apply Feres, using this logical and meaningful policy as its guiding principle. In 1980, the Fifth Circuit struggled with how to actually determine if a certain claim impeded upon the policies as expressed by the Supreme Court. Parker v. United States, 611 F.2d 1007 (5th Cir.,1980). The Court noted that policies, such as the relationship of soldiers to their superiors, were factors which explained why there was an exception, but did not give the court any guidance in how to apply the exception itself. Id. at 1013. The Parker Court noted certain factual indicia, such as duty status and where the injury occurred, that would help to determine whether an activity was truly 'incident to service.' Id.

The Eleventh Circuit used this precedent to form its own application of the Feres Doctrine, using the guidance from subsequent opinions by the United States Supreme Court. In the 1986 case of Johnson v. United States, the Eleventh Circuit noted language from other post-Feres decisions. The Eleventh Circuit quoted the Supreme Court:

"...in the last analysis, *Feres* seems best explained by the 'peculiar and special relationship of the soldier to his superiors, the effects of the maintenance of such suits on discipline, and the extreme results that might obtain if suits under the Tort Claims Act were allowed for negligent orders given or negligent acts committed in the course of military duty.' " *United States v. Muniz*, 374 U.S. 150, 162, 83 S.Ct. 1850, 1857, 10 L.Ed. 2d 805 (1963), quoting *United States v. Brown*, 348 U.S. 110, 112 [75 S.Ct. 141, 143, 99 L.Ed 139] (1954).

Johnson v. United States, 779 F.2d 1492, 1494 (11th Cir. 1986).

The Eleventh Circuit also noted that the Supreme Court seemed to support a less strict application of the Feres Doctrine in its most recent decision at that time, Shearer v. United States. See id. at 1495. In Shearer, the Court had stated that the Feres Doctrine "cannot be reduced to a few bright line rules; each case must be examined in the light of the statute as it has been construed in *Feres* and subsequent cases." Shearer v. United States, 473 U.S. 52, 57 (1985). The Eleventh Circuit Court, noting the alleged tortfeasor was a civilian employee of the Federal Government and since such a paradigm differed from that strictly held in Feres, held it was proper for the lower court to find the claim was not barred by the doctrine. Johnson v. United States, 779 F.2d 1492, 1496-97 (11th Cir. 1986).

However, despite the Eleventh Circuit's gleaning of prior Supreme Court precedent and incorporating those principles into a rule of application, the United States Supreme Court over-ruled the Eleventh Circuit in Johnson v. United States, 481 U.S. 681 (1987). The Court expressly rejected the Eleventh Circuit's "reformulation of the *Feres* doctrine'. Id. at 685. As Justice Scalia noted in his insightful dissenting opinion, the Court's refusal to allow the Circuits to distinguish between military negligence and civilian negligence did nothing to confine the "clearly wrong decision in *Feres* ". Id. at 703 (dissent opinion).

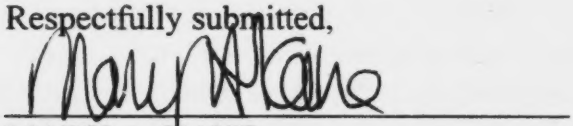
In Johnson, the Supreme Court majority noted that Justice Scalia would have invited the Court to over-rule the Feres Doctrine, had it been requested by counsel. Id. at 688, footnote 9. Justice Scalia notes twice in his dissent opinion that the Respondents had failed to request that the Court revisit the judicially-created doctrine. Petitioner, Kathleen Crume does ask that this Court readdress the concerns that the Feres Doctrine has created in the Circuits. Petitioner respectfully requests that the Court review the Federal Tort Claims Act and determine whether such an exception is

really permitted by the language of the statute. Furthermore, Petitioner requests that the Court over-rule the *Feres* doctrine as it has caused the Circuits to apply the doctrine in a troublesome and widely criticized manner. As Justice Scalia noted in his dissent opinion, "*Feres* was wrongly decided and heartily deserves the 'widespread, almost universal criticism' it has received." Id. at 701-02.

CONCLUSION

For the reasons stated above, this Court should grant Petitioner's Petition for Writ of Certiorari and over-rule the holding in Feres as it is not consistent with the intent of the statute and basic principles of fairness and justice.

Respectfully submitted,



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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA JACKSONVILLE DIVISION

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MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

KATHLEEN CRUME, Personal Representative of the Estate of James Patrick Hurley,

Plaintiff

v. **No. 3:98-cv-1048-CIV-J-21C**

UNITED STATES OF AMERICA,

Defendant.

_____/

ORDER

Before the Court is Defendant's Motion to Dismiss or for Summary Judgment (Dkt. 46), filed March 3, 2000, pursuant to Fed. R. Civ. P. 12(b)(1), (6) & 56. Plaintiff has timely opposed the motion. For reasons that follow, the Court dismisses the case for lack of subject matter jurisdiction.

Plaintiff brings suit under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-80, concerning the death of James Patrick Hurley, an ensign in the United States Navy. Plaintiff is a surviving parent and the personal representative of Hurley's estate. She claims that the negligence of Navy personnel, both before and after his release from inpatient psychiatric treatment at the Naval Hospital, caused Hurley to commit suicide while he was on approval leave from his duty station in June 1995. The defendant asserts that plaintiff's claims are barred by the doctrine announced in *Feres v. United States*, 340 U.S. 135 (1950), because Hurley "was involved in activities incident to his military service at the time of the alleged act or omissions of Navy medical staff and Navy military supervisors." (Def. Mot. Dism. at 3). Defendant also asserts that the action is time-barred for failure to find an administrative claim within two years after its accrual. Because the Court finds that the *Feres* doctrine bars this action, resolution of this issue ends the matter.

Standard of Decision

The defendant invokes Rule 12(b)(1),Rule 12(b)(6), and Rule 56. The law is clear, however, that the *Feres* doctrine creates a jurisdictional bar to suit against the federal government and deprives the Court of subject matter jurisdiction. Thus this aspect of defendant's motion is governed by Rule 12(b)(1). If the doctrine applies, the proper disposition is a dismissal for lack of subject matter jurisdiction. *Rayner v. United States*, 760 F.2d 1217, 1218 & n. 2 (11th Cir. 1985).

Factual Background

The complaint alleges that Hurley was commissioned as a Navy ensign upon his graduation from the University of Notre Dame in 1994 and reported to the Navy Supply Corps School in Athens, Georgia. In December 1994, he was removed from the school and assigned elsewhere after he was found guilty of cheating on an open-book examination when, by his own report, he partially relied on notes written in the textbook by a previous student. In May 1995, Hurley underwent a mental health evaluation at a branch medical clinic of the Naval Hospital located in Athens, where he was diagnosed with major depression, suicidal ideation and plans, and alcohol dependency, and he was prescribed Prozac. Hurley was ordered to and did report to the Naval Hospital in Jacksonville, Florida, for admission. At the hospital, Hurley's diagnosis included bipolar disorder, depression, suicidal ideation, and sustained alcohol abuse. According to the complaint, Hurley was found at that time to be handicapped and unable to perform his duties. (Second Am. Compl. at 3, ¶ 16.)

After two weeks of inpatient treatment, Hurley was discharged from the hospital on May 18, 1995, with a 21-day convalescent leave. He allegedly received medication but no on-going treatment plan, was instructed to return for disability processing, and was ordered to report to resume duties on June 7, 1995 (Second Am. Compl. at 3, ¶ 18). On June 12, 1995, Hurley again visited the branch clinic in Athens. His medication was increased, but he was not hospitalized. The next day, Hurley requested leave for June 26-30, 1995, which request was approved. While on leave, he visited the University of Notre Dame and there committed suicide by a self-inflicted gunshot wound to the head.

Plaintiff claims that the professional negligence of health care providers and the negligence of other Navy personnel were the proximate cause of Hurley's injuries and death and plaintiff's resulting damages (Second Am. Compl. at 4-5, ¶¶ 27, 33.)

Analysis

The FTCA generally waives the United States' sovereign immunity from suit for negligent injury to persons or property. The Supreme Court recognized an exception in *Feres*, 340 U.S. at 146, where it held that service members cannot bring tort suits against the federal government for injuries that "arise out of or are in the course of activity incident to service." Since that decision, "the *Feres* doctrine has been applied consistently to bar all suits on behalf of service members against the Government based upon service-related injuries." *United States v. Johnson*, 481 U.S. 681-686 (1987). Defendant asserts that the doctrine applies here because Hurley allegedly was injured by negligent acts or omissions of military personnel committed in the course of his military service and while he was on active duty status. Defendant likens this case to *Jiminez v. United States*, 158 F.3d 1228 (11th Cir. 1998), which barred the claim of a Navy seaman who allegedly received negligent medical care after he was given a bad-conduct discharge but while his conviction was on appeal.

Plaintiff, on the other hand, relies on *Elliott v. United States*, 13 F.3d 1555 (11th Cir. 1994). She seeks to avoid the *Feres* doctrine by arguing that Hurley was not acting incident to service at the time of his self-inflicted injury; he was then on furlough and absent form the military base, was disabled and in the midst of disability processing, and was engaged in activity bearing

no relationship to his military service. The Court is unpersuaded by this argument for two reasons. First, the *Elliott* opinion was vacated on rehearing, 28 F.3d 1076, and on rehearing en banc, the court was equally divided and unable to reach a decision. *See Elliott v. United States*, 37 F.3d 617 (11th Cir. 1994). Second, plaintiff incorrectly focuses on Hurley's circumstances at the time of his suicide. The proper focal point is the time period of the alleged negligence that purportedly caused it.

In *Jiminez*, 158 F.3d at 1229, the court of appeals stated that a proper inquiry requires a determination of the serviceman's military status "at the time he received the allegedly negligent medical care at issue." Arguably, this statement is dicta because the claimed negligent act presumably occurred in close temporal proximity to the physical manifestation of injury. Other courts have faced the issue of a time lapse, however, where physical injuries surface after a discharge from service and have concluded: "The question under the *Feres* doctrine is not whether the injury began before or after discharge. Rather, the questions are whether the government committed an independent tort after discharge, and wehether this tort caused any damages." *M.M.H. v. United States*, 966 F.2d 285, 288 (7th Cir. 1992). In this case, plaintiff does not claim that the alleged tortfeasors committed any independent tort unconnected with Hurley's military service that caused discreet injury or damage. Therefore, the inquiry suggested by *M.M.H.* is inapplicable here.

That the "incident to service" factor must be viewed as of the time of the allegedly negligent conduct is self-evident in some situations. For example, in combat, fallible officers and non-commissioned officers make necessarily hasty decisions that, in calm retrospect, may seem to be less that objectively reasonable. If a service

member first experiences a severe post-traumatic stress long after the operation, permitting him to sue because of a battlefield leader's order would still result in disruption of obedience, good order, and discipline. Passage of time and restoration of peace would not negate this.

The good order of military medical practice would similarly be disrupted if plaintiff's theory were adopted. By the very nature of their practice, military physicians have responsibilities in addition to healing, for example, detecting malingering (or "riding the sick book"), conserving manpower by early restoration of patients to duty status, evaluating patients for suitability for future service, rating disabilities, and so forth. The hot breath of litigation should not be permitted to have the slightest effect on these delicate decisions.

Hurley came under the charge of the alleged tortfeasors because of his military service. The *Feres* doctrine and its underlying policies are served by precluding judicial review of the actions or inactions of mental health care providers and other Navy personnel allegedly responsible for Hurley's suicide. Therefore, the sovereign immunity of the federal government bars this action, and this Court lacks subject matter jurisdiction.

Conclusion

Defendant's motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction is GRANTED.

DONE AND ORDERED at Jacksonville, Florida this 30th day of March, 2000.

s/_____
WAYNE E. ALLEY
United States District Judge

Appeal from the United States District Court
For the Middle District of Florida

(November 17, 2000)

Before TJOFLAT, BARKETT and MARCUS, Circuit Judges

PER CURIAM:

Kathleen Crume appeals the district court's final summary judgment in favor of the United States in this action brought pursuant to the Federal Tort Claims Act ("FTCA"). On appeal, Crume contends that the district court erroneously granted summary judgment based on its conclusion that it lacked subject matter jurisdiction over the action, pursuant to the "Feres doctrine."1 We review a district court's decision to dismiss a cause of action for lack of jurisdiction de novo. See Wilkins v. Commercial Investment Trust Corp., 153 F.3d 1273, 1275-76 (11th Cir. 1998).

Upon a thorough review of the record, as well as careful consideration of the parties' briefs, we find no reversible error and affirm.

The background facts are straightforward. Crume filed this action as personal representative of the estate of her son, James Hurley, an Ensign in the U.S. Navy, asserting a claim for "Negligence Under the Federal Tort Claims Act," and alleging that U.S. Navy personnel had rendered unreasonable medical care to Hurley and that this substandard medical care resulted in

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1 Feres v. United States, 340 U.S. 135, 71 S.Ct. 153, 95 L.3d 152 (1950).

Hurley's suicide at a location away from the Navy facility. Specifically, Crume asserted that at the Naval Clinic in Athens, Georgia (a branch of the Naval Hospital in Jacksonville, Florida), Hurley was diagnosed as "handicapped and unable to perform his duties" due to mental and psychiatric problems prior to being permitted to take a four day leave to go on a trip to Indiana. While Hurley was in Indiana on leave, he committed suicide, which Crume highlights "was in the midst of disability processing" by Navy personnel.

The United States moved to dismiss the complaint based on the Feres doctrine and the statute of limitations. The district court determined that it did not have jurisdiction and dismissed the complaint on that basis.

On appeal, Crume argues that the district court erred by applying Feres to bar this FTCA action because Hurley died at a time when he "was acting incident to military service." The United States responds that because the record unequivocally establishes that all Navy personnel activity arose out of or was in the course of activity that was incident to Hurley's military service, the district court correctly concluded that the United States was immune from suit under Feres.

It is well-established that sovereign immunity bars suit against the United States except to the extent that it consents to be sued. See United States v. Mitchell, 463 U.S. 206, 212, 103 S.Ct. 2961,2965, 77 L.Ed. 2d 580 (1983); Powers v. United States, 996 F.2d 1121, 1124 (11th Cir. 1993). Congress has authorized a limited waiver of sovereign immunity under the FTCA. See 28 U.S.C. § 2674. Long ago, the Supreme Court delineated the Feres doctrine, which creates an exception to FTCA recovery when a service member is injured or killed incident to military service, in a trilogy of cases. See Brooks v. United States, 337 U.s. 49, 69 S. Ct. 918, 93 L.Ed. 1200

(1949); Feres v. United States, 340 U.S. 135, 71 S. Ct. 153, 95 L.Ed. 152 (1950); United States v. Brown, 348 U.S. 110, 75 S. Ct. 141, 99 L. Ed. 139 (1954). Pursuant to the Feres doctrine, the FTCA does not waive sovereign immunity "for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." United States v. Johnson, 481 U.S. 681, 686, 107 S. Ct. 2063, 2066, 95 L. Ed. 2d 648 (1987) (emphasis added).

Under controlling case law, the provisions of benefits, such as medical care (or psychiatric treatment in this case:, to service persons "because of their status as military personnel is considered 'activity incident to [such] service.'" Rayner v. United States, 760 F.2d 1217, 1219 (11th Cir. 1985) (citations omitted). "It is obvious that the injured man could not have been admitted, and would not have been admitted, to the Naval Hospital except for his military status. He was there treated by Naval medical personnel solely because of that status. It inescapably follows that whatever happened to him in that hospital and during the course of treatment had to be 'in the course of activity incident to service.'" See Shults v. United States, 421 F.2d 170, 171-72 (5th Cir. 1969) (affirming dismissal of a sailor's medical malpractice suit against the government). Indeed, suits by servicemen or their representatives for medical malpractice based on care provided as a benefit to the serviceperson's status as

military personnel are generally barred by Feres. See Rayner, 760 F.2d at 1219.2

In the absence of an express waiver of immunity, "a district court has no jurisdiction to entertain a suit against the United States." Stanley v. Central Intelligence Agency, 639 F.2d 1146, 1156 (5th Cir. Unit B 1981). Accordingly, the district court did not err by dismissing this action.

AFFIRMED.

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2 To the extent that Crume relies on Elliott v. United States, 28 F.3d 1076 (11th Cir. 1994), that panel decision was vacated and the district court's opinion was affirmed by operation of law due to an equally divided court. See Elliott v. United States, 37 F.3d 617 (11th Cir. 1994). Accordingly, the vacated panel opinion is without precedential value. See, e.ge., Bolt v. Halifax Hosp. Med. Ctr., 980 F.2d 1381, 1391 (11th Cir. 1993).

28 U.S.C. § 1346 (b)(1)

Subject to the provisions of chapter 171 of this title [28 USCS Sec. 2671 et seq.]. the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.